STATE OF MICHIGAN

IN THE SUPREME COURT

DRAGEN PERKOVIC,

Plaintiff-Appellant,

-vs-

ZURICH AMERICAN INSURANCE COMPANY,

Defendant-Appellee.

Supreme Court No.152484

Court of Appeals No. 321531

Wayne County Circuit Court No. 09-019740-NF

/

DEFENDANT-APPELLEE ZURICH AMERICAN INSURANCE COMPANY'S SUPPLEMENTAL BRIEF IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

DEAN & FULKERSON, P.C.
JAMES K. O'BRIEN (P27794)
Attorneys for Defendant-Appellee,
Zurich American Insurance Company
801 W. Big Beaver, 5th Floor
Troy, Michigan 48084-4767
(248) 362-1300

TABLE OF CONTENTS

Page

INDEX OF AUTHORITIES

Cases **Page**

Cases

Statutes

Statutes

Court Rules

Rules

ORDER BEING APPEALED FROM AND RELIEF REQUESTED

Plaintiff – Appellant Dragen Perkovic has correctly identified the Court of Appeals decision dated September 10, 2015 (312 Mich. App. 244) as the Order he is appealing from. In addition, Plaintiff-Appellant implicitly seeks relief from the trial court's "Opinion and Order of the Court Granting Defendant's Motion for Summary Disposition Pursuant to MCR 2.116 (C) (7)," of February 20, 2014, and its "Opinion and Order of the Court Denying Plaintiff's Motion for Reconsideration," of April 8, 2014. (Exhibit pages 3b – 15b)

Defendant-Appellee Zurich American Insurance Company requests that this Court deny the application for leave to appeal for the reason that it does not satisfy any of the mandatory requirements for granting leave set forth in MCR 7.305 (B), and the case was correctly decided by the Trial Court and Court of Appeals

COUNTER-STATEMENT REGARDING QUESTIONS PRESENTED

I.
SHOULD THIS COURT GRANT LEAVE TO APPEAL TO RECONSIDER THE COURT OF APPEALS DETERMINATION THAT ANY ACCIDENT INFORMATION FURNISHED BY NEBRASKA MEDICAL CENTER DID NOT CONSTITUTE ADEQUATE NOTICE OF A CONTEMPLATED NO-FAULT BENEFIT CLAIM TO AVOID THE ONE-YEAR LIMITATIONS PERIOD PROVIDED IN MCL 500.3145(1)?

Plaintiff-Appellant says "Yes."

Defendant-Appellee says "No."

II.
SHOULD THIS COURT GRANT LEAVE TO APPEAL TO RECONSIDER THE COURT OF APPEALS APPLICATION AND INTERPRETATION OF THE STATUTORY LANGUAGE OF MCL 500.3145(1), WHEN NONE OF THE MANDATORY GROUNDS IN MCR 7.305(B) FOR SUCH AN APPLICATION HAVE BEEN SATISFIED?

Plaintiff-Appellant says "Yes."

Defendant-Appellee says "No."

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Defendant-Appellant, Zurich American Insurance Company adopts by reference the extensive statements of material proceedings and facts set forth in the trial court's decision, and the Court of Appeals decision.

SUMMARY OF ARGUMENT

The issue to be decided in this case is whether the sending of medical records alone, without explanation, without the knowledge of the injured party, and without an expression of intention to make a claim for no-fault benefits, is sufficient to satisfy the notice requirements of MCL 500.3145 (1):

> **500.3145 Limitation of actions for recovery of personal or property protection benefits; notice of injury.**
>
> Sec. 3145 (1) **An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident** or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. **The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.**

Zurich American Insurance Company (Zurich) contends, and the Court of Appeals found[1], that an essential element of notice, satisfying the requirements of MCL 500.3145 was a stated intention to claim no-fault benefits – an element lacking in the medical records transmitted without the knowledge of plaintiff, Mr. Perkovic. The basis for the decision of the Court of Appeals, and the trial court, is language clearly stated in the statute under consideration, which

[1] *Perkovic v. Zurich American Insurance Co.*; 312 Mich App 244, __N W2d __,(2015) hereinafter "Perkovic Opinion")

has been the subject of numerous reported and unreported cases that have reached the same conclusion as the Court of Appeals did in the present case.

Cases cited in the Court of Appeals by the Plaintiff, Dragen Perkovic (Perkovic) purportedly reaching a contrary result were clearly distinguished by the Court of Appeals as inapplicable to the present situation where the fortuitous "notice" was ineffective in conveying to the target insurer an intent to make a claim for no-fault PIP benefits – for the very good reason that Mr. Perkovic, the injured party, had no such intent to make any no-fault claim against Zurich until over a year after the accident.

The cases cited by Mr. Perkovic in his Application for Leave to Appeal concern general rules of statutory construction, applied in the context of governmental pre-suit notice statutes – none dealing with the no-fault statute – all of which are perfectly consistent with the statutory interpretation of MCL 500.3145 by the Court of Appeals in the present case.

None of the alternative grounds in MCL 500.3145 which might allow this lawsuit to proceed against a no-fault insurer (voluntary payment of benefits by the insurer; suit commenced within one year of the date of accident) have been asserted, nor is there any basis to assert them.

The issue on appeal concerns only the Court of Appeals' interpretation of the statute, and its application of that interpretation to the admitted facts in this case, putting the case in a posture where it does not even arguably satisfy any of the mandatory grounds required by MCR 7.305(B) for considering Mr. Perkovic's application.

In short, this is a case:

- that does not question the validity of a legislative act;
- that does not involve the state, or any state agency as a party;

- that does not involve a legal principle of major significance to the state's jurisprudence (interpretation of a statute consistent with its language, and consistent with prior interpretations of the same language in numerous reported decisions);
- that does not involve an appeal before a decision of the Court of Appeals;
- that does not conflict with a Supreme Court or Court of Appeals decision;
- that does not reach a result that is clearly erroneous[2], or that results in material injustice;
- that does not involve an appeal from the Attorney Discipline Board

The application for leave in this case does not satisfy any of the mandatory bases that must be shown for an application to satisfy MCR 7.303 (B), and the application should be denied.

I. THE COURT OF APPEALS RULED THAT THE NOTICE REQUIRED UNDER 500.3145 MUST BE NOTICE THAT INFORMS A NO-FAULT INSURER OF A CLAIM FOR NO-FAULT BENEFITS

A. Plaintiff Appellant, Dragen Perkovic ("Perkovic"), had no intention to make claim against Zurich American Insurance Company ("Zurich") for no-fault benefits relating to the accident of February 28, 2009 during the year following that accident.

Mr. Perkovic intended to claim, and did make claim against his personal automobile no-fault insurer, Citizens Insurance Company ("Citizens"), and started suit against Citizens in August, 2009, within one year of the February 2009 accident.

[2]" This Court reviews de novo questions of law, **but we review findings of fact for clear error**. *Ross v. Auto Club Group*, 481 Mich. 1, 7, 748 N.W.2d 552 (2008) "A decision is **clearly erroneous** when 'the reviewing court is left with a definite and firm conviction that a mistake has been made.' *Id.*, quoting *Kitchen v. Kitchen*, 465 Mich. 654, 661–662, 641 N.W.2d 245 (2002). (Emphasis supplied). Perkovic did not claim that either the trial court, or the Court of Appeals misapprehended or mis-stated the facts involved in this case. Rather, the issue under consideration is the proper interpretation of the statutorily required elements of notice under MCL 500.3145 (1).

Mr. Perkovic intended to claim, and did make claim, against Hudson Insurance Company ("Hudson"), and started suit against Hudson on February 12, 2010. Yet despite the existing lawsuit against Citizens, and the prior amendment in that lawsuit to add Hudson, it was not until March 10, 2010, more than a year after the accident, that Mr. Perkovic filed "Plaintiff's Emergency Motion for Leave to Amend Plaintiff's Complaint" ["Emergency Motion"]. In that motion, Perkovic asserted that

> "2. Plaintiff has become aware that another insurance company or companies may be the correct carrier(s) for his outstanding PIP benefits.
> 3. Plaintiff believes that, Zurich American, Zurich Insurance Company of America and/or a related entity may be responsible for his PIP benefits."
> [Emergency Motion, Appendix pages 16-18b]

The motion was granted on six days' notice, on March 16, 2010, and on March 25, 2010, one year and 44 days after the accident, Plaintiff's Second Amended Complaint was filed, adding Zurich American Insurance Company to the lawsuit for the first time.

The point of this summary of events is to make it clear that, for at least a year following the February 2009 accident, Mr. Perkovic did not become aware that "Zurich… may be responsible for his [no-fault] PIP benefits." On the strength of this certification [MCR 2.114 (D)], it should be deemed established that Mr. Perkovic did not make a claim and did not intend to make a claim against Zurich prior to March, 2010.

The significance of this fact, in the context of interpreting and applying the notice provision of MCL 500.3145 (1), is that, even if accident and injury information may fortuitously reach an insurer, it is insufficient to satisfy the requirements of the statute if the information transmitted does not convey an intention to make claim for no-fault PIP benefits. This straightforward, literal interpretation of the statute is expressed succinctly by the court in *Myers v Interstate Motor Freight System* 124 Mich App 506, 335 NW2d 19 (1983):

> The statute. [MCL 500.3145 (1)] requires the notice of injury to be given "by a person claiming to be entitled to benefits" or someone on his behalf.
>
> In the instant case, plaintiff admits that he did not claim to be entitled to no-fault benefits at the time he notified defendant of his injury. … Under the plain language of the statute, plaintiff's notice of injury did not operate to extend the one-year period of limitations applicable to actions for no-fault benefits. *Myers, supra*, 124 Mich App 506, 509.

B. Zurich American Insurance Company had no knowledge of, and received no notice of any claim or potential claim for PIP benefits relating to Mr. Perkovic's February 2009 accident until April 1, 2010.

For purposes of appellate review of the trial court's grant of Summary Disposition, Zurich does not contest that medical records from the Nebraska Medical Center (NMC) relating to treatment of Mr. Perkovic following the February, 2009 accident were apparently sent to a Zurich office, although Zurich has no information confirming that event. Those medical records were sent without a cover letter or explanation for the purpose of obtaining payment to NMC for treatment of Mr. Perkovic relating to the accident.

It is not surprising that the records were, apparently, sent back to NMC after an unsuccessful search of their records for any existing no-fault benefit claim by or on behalf of Mr. Perkovic. The process was described in the affidavit of Jamie Fisher (Appendix pages 19-20b) submitted by Zurich in support of summary disposition in the trial court, without challenge or objection by Perkovic:

> 4. "… if a medical bill or record were received by itself, from a medical institution that was not an insured of Zurich, without any accompanying letter, memorandum, phone call, or other explanation, such as the documents attached to the White Affidavit,
>
> 5.… The DDC [Zurich's Document Delivery Center] performed a basic search to match incoming mail to an existing claim under a Zurich insurance policy, and if they can't find an associated claim, they sent unmatched mail to the Care Center for further processing. A Care Center employee would search medical records and/or bills received for a patient name, and search the Zurich claim system for any claimant or insured by that name. If a matching claim was found, the mail was transmitted to the claims professional assigned to that claim file. If no claimant by that name was found in the claim system, the Care Center

> employee notated on the first page of the received mail, language to the effect of "No injury report on file for this person." The Care Center employee then forwarded the unmatched mail to the Administration Department to be returned to the sender."

The fortuitous sending of medical records by NMC was not authorized by, or even known to Mr. Perkovic. It was not intended as a claim, or even notice of an intended claim for no-fault PIP benefits on behalf of Mr. Perkovic. Sending medical records, which were later returned to NMC, did not result in the establishment of a claim file by Zurich. (July 26, 2013 affidavit of Debra Keys, Appendix pages 21b – 78b)

Medical records, sent without explanation, may coincidentally include some of the specific descriptive information required in a notice under MCL 500.3145, but without the critical element of the expressed intent to make a claim for No Fault benefits, they did not "… [I]n fact, apprise the insurer of the need to investigate and to determine the amount of possible liability of the insurer's fund." *Heikkinen v Aetna Cas & Sur Co,* 124 Mich App 459, 461; 335 NW2d 3 (1981).

Notice of intention to file a claim for no-fault benefits is an essential element of the notice requirement of MCL 500.3145. The wording of the statute, ("…notice… **by a person claiming to be entitled to benefits** therefor, or by someone on his behalf… The notice shall give the name and address of the **claimant** …**"**) requiring that the submission be on behalf of a "**claimant**" indicates that the required information must convey an intention, in sending specific accident and injury information, to make claim for PIP benefits against the insurer receiving notice of such an intended claim. Cases interpreting the statute make it clear that this is the appropriate result, and that is the result the Court of Appeals reached in its decision in this case.

> In this case, however, no letter or written notice form was sent that would alert defendant to the possible pendency of a no-fault claim. See *Joiner*, 137 Mich App at 472. Rather, the medical bill and medical records were sent

> to defendant without any indication of a possible claim. In fact, according to [NMC employee] White, the bill and records were sent for the purpose of obtaining payment. This notice of injury, which was unrelated to a possible claim for no-fault benefits, did not trigger defendant's investigative procedures or advise defendant of the need to appropriate funds for settlement. See *id* at 471. Similar to the death certificate in *Heikkinen*, 124 Mich App at 464, the medical bill and medical records, although sufficient in content, did not fulfill the purposes of the statute. Accordingly, plaintiff did not provide sufficient notice pursuant to MCL 500.3145(1) and the trial court properly granted summary disposition in favor of defendant. *Perkovic*, 312 Mich App 244, 258

Other courts that have held the transmittal of information about an auto accident, and injuries suffered is insufficient to satisfy 500.3145, absent an expression that the information is sent in furtherance of a claim for no-fault PIP benefits include:

Attorney General v State Farm Mutual Automobile Insurance Company 160 Mich App 57, 408 NW2d 103 (1987). Letter from subrogated assigned-claims plan insurer to insurer of vehicle involved in accident, purportedly giving notice on behalf of passenger killed in accident; notice deemed insufficient because "…the letter did not sufficiently inform [the No-fault insurer of the vehicle] of the need to investigate and to determine the possible amount of liability of [the insurer's] fund with respect to the decedent's claim." *Attorney General v State Farm Mutual Automobile Insurance Company*, 160 Mich App 57, 71.

Robinson v Associated Truck Lines, Inc, 135 Mich App 571, 355 NW2d 282 (1984) . Notice to contact person for self-insured [for No-Fault and Worker's Compensation coverage] employer, seeking "whatever benefits" available, deemed solely a claim for workers compensation benefits, and employer never received sufficient notice of claims for no-fault benefits. 135 Mich App 571, 575.[3]

[3] remanded by the Supreme Court to the trial court for a hearing solely limited to the factual basis for plaintiff's claims of fraud and misrepresentation as to benefits available. 422 Mich 946.

In the course of explaining its decision, the *Perkovic* Court of Appeals acknowledged, and distinguished, some cases in which MCL 500.3145 notice, while lacking in some minor element, was held to have substantially complied with the statutory requirement, as long as it clearly indicated an intent to make claim for No-Fault benefits;

> While this Court does not always require strict, technical compliance with the requirements of MCL 500.3145(1), in *Dozier, Walden,* and *Gomez* there was no indication that the defendant was unaware of a possible no-fault claim. The defendants in those cases were sent either a letter or a written notice form. See *Gomez,* 114 Mich App at 819; *Walden,* 105 Mich App at 530; *Dozier*, 95 Mich App at 124

In each of those cited cases, despite the deficiency[4] in the notice, there was no question that the agent for the injured claimants "…was providing the notice with the intent to file a claim." The Court of Appeals contrasted those cases with the present case, where, unlike *Gomez, Walden* and *Dozier* there was no question that nothing in the NMC medical bills themselves that provided an explicit statement, or even a basis for inferring, that Mr. Perkovic intended the medical records to constitute a claim for no-fault PIP benefits. The court held that the situation was similar to, and governed by *Heikkinen v Aetna Cas & Sur Co*, 124 Mich App 459, 461; 335 NW2d 3 (1981), in which a death certificate, incidentally providing information on the plaintiff's husband's death and automobile related accident was forwarded to plaintiff's income tax preparer and insurance agent (the same person) for purposes unrelated to any claim for no-fault benefits. Even though the death certificate coincidentally provided some of the information required by an MCL 500.3145 notice, it was insufficient because

> This notice of injury, which was unrelated to a possible claim for no-fault benefits, did not trigger defendant's investigative procedures or advise defendant

[4] failure to specifically describe injuries in *Walden,* and *Dozier*; failure to supply the name of one of two claimants injured in an auto accident in *Gomez.*

> of the need to appropriate funds for settlement. [*Perkovic v Zurich American Ins Co., 312 Mich App 244, 258*]

The Court of Appeals decision in this case does not conflict with those cases that allow some leeway in the descriptive information – description of injury, exact location of accident, etc. – included in a notice under MCL 500.3145 to an insurer of an accident, resulting in injury, and an intention to seek PIP benefits. Equally as important, however, it is consistent with a long line of cases including *Robinson,* and *State Farm, supra,* clearly establishing that the fortuitous delivery of some information about an auto accident to an insurer is insufficient to satisfy the requirements of MCL 500.3145, where it was not intended by the sender to give notice of an intent to claim for no-fault PIP benefits, and did not put the insurer on notice of an imminent claim for such PIP benefits.

C. Plaintiff's arguments in favor of "strict construction" of the notice requirement in MCL 500.3145 are completely consistent with the Court of Appeals' interpretation, giving effect to all of the words of the statute.

Mr. Perkovic's argument in support of his application for Supreme Court review may be fairly reduced to the proposition that MCL 500.3145 (1) is to be strictly construed; no word added, and no words ignored. That assertion is correct, and not disputed by Zurich.[5] However Mr. Perkovic's proffered "strict construction" urges the Court to concentrate on the fifth sentence of MCL 500.3145 (1) and ignore, or read out of existence the preceding sentence of that statute.

The last sentence of MCL 500.3145 (1) specifies one part of the notice to be given to a no-fault insurer: the specific information concerning an accident:

[5] In fact, the *Perkovic* Court of Appeals cites, with approval, the same expression of that precept urged by Plaintiff, quoting *Devillers v. Auto Club Ins. Ass'n.,* 473 Mich. 562, 574, 702 N.W.2d 539 (2005): "… the language of the statute 'must be enforced according to its plain meaning, and cannot be judicially revised or amended to harmonize with the prevailing policy whims of members of this Court.' Id. at 582, 702 N.W.2d 539." Perkovic Opinion, 312 Mich App 244, 252. Thus, the Plaintiff has set for himself the considerable task of proving that the Court of Appeals, after adopting the formula for strict construction Mr. Perkovic urges, unintentionally strayed from that path.

> The notice shall give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place and nature of his injury.

The sentence immediately preceding that in the statute gives another requirement for satisfactory notice:

> The notice of injury required by this subsection may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits therefor, or by someone in his behalf. (emphasis furnished)

As noted above, in the *Myers* case, this portion of the statute is no less important than the later requirement for specific description of injuries:

> The statute [MCL 500.3145 (1)] requires the notice of injury to be given 'by a person claiming to be entitled to benefits' or someone on his behalf.
>
> In the instant case, plaintiff admits that he did not claim to be entitled to no-fault benefits at the time he notified defendant of his injury. … **Under the plain language of the statute**, plaintiff's notice of injury did not operate to extend the one-year period of limitations applicable to actions for no-fault benefits. *Myers, supra*, 124 Mich App 506, 509. (Emphasis furnished)

It may be that the Court of Appeals focused on the underlying "purpose" or the "policy" of MCL 500.3145 [Plaintiff's Application, Page 7], but it is a purpose and policy specifically stated in the fourth sentence of MCL 500.3145. Strict construction of MCL 500.3145 (1) – all of its provisions – is exactly what the Court of Appeals did.

Mr. Perkovic also complains that the well-established points of law relied upon by Zurich, and the Court of Appeals in its decision are "1980s vintage" case precedent. Yet, Plaintiff's Application does not cite the Court to more recent decisions, giving contrary interpretations of MCL 500.3145. [6] This is an especially frustrating argument to answer, since, as plaintiff, and this Court well know, the more closely newer cases follow the established

[6] Cases cited in Plaintiff's Application at page 11 do not deal with the No-Fault Statute, but rather with state government pre-suit notice provisions such as MCL 600.4431; MCL 691.1404, etc. and attempts to read in a "lack of prejudice" requirement not appearing in the wording of the statute.

precedent in *Heikkinen*, *Myers*, *Robinson*, *State Farm*, etc., the less likely they will meet the criteria for publication of appellate opinions in MCR 7.215 (B) [e.g.: establishing rule of law,… Altering or modifying an existing rule of law… Criticizing existing law… Creating or resolving an apparent conflict of authority…] But such cases definitely exist. [7]

II. IN THE ABSENCE OF ADEQUATE NOTICE SATISFYING MCL 500.3145, NO OTHER BASIS IS ASSERTED OR AVAILABLE TO ALLOW A SUIT FOR PIP BENEFITS MORE THAN ONE YEAR AFTER THE ACCIDENT

In the absence of sufficient notice of an anticipated claim for no-fault PIP benefits satisfying MCL 500.3145, suit may proceed against a no-fault insurer only if:

1. The insurer has made payments of no-fault benefits to the insured claimant/plaintiff; or

2. Suit has been started against the insurer within one year after the date of the accident giving rise to the claim for benefits.

Plaintiff admitted in the trial court that no payment has ever been made by Zurich to Mr. Perkovic for any personal protection insurance benefits arising out of the February, 2009 accident. [Second Amended Complaint, paragraph 24-26]. Also see Zurich American Insurance Company Answer, and Affirmative Defenses, and particularly affirmative defense number 2:

> 2. As defendants. [Zurich American Insurance Company and a similarly named entity unrelated to the case, and later voluntarily dismissed] did not receive a written notice of injury from plaintiff within one (1) year after the accident which is the subject of his Complaint, and defendants have made no payment of personal protection insurance benefits to plaintiff, plaintiff's claim for personal protection insurance benefits is barred by MCL §500.3145(1).

[7] Mindful of the Court's disfavor of unreported appellate decisions, Zürich will provide only one example, *Benson v. Amerisure Insurance*, Michigan Court of Appeals unpublished opinion per curiam issued May 24, 2016, No. 322024, which discusses the *Perkovic* opinion in detail, and applies its reasoning in a factually similar case turning on interpretation of MCL 500 3145, and upholding the requirement that notice must include a stated intention to make a claim for No-Fault PIP benefits. (Exhibit page 79 b)

It has never been disputed at the trial, or appellate level that, Zurich American Insurance Company was first added to this litigation no earlier than March 25, 2010, one year and 25 days after the accident of February 28, 2009[8].

Plaintiff cannot rely on MCR 2.118 to assert that the filing of the second amended Complaint "relates back" to the date of the original complaint since that doctrine has no application to the addition of a new party, and claims made for the first time against that party in an amended complaint:

> "MCR 2.118(D) provides:
> 'An amendment that adds a claim or a defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.' However, '[t]he relation-back doctrine does not apply to the addition of new parties.' *Cowles v Bank West*, 263 Mich App 213, 229; 687 NW2d 603 (2004)[aff'd in part, vacated in part, and remanded 476 Mich 1 (2006)]; see also *Employers Mutual, supra* at 63.
>
> * * * *
> Moreover, this Court adds that MCR 2.118(D) specifies that an amendment relates back to the date of the original pleading only if it "adds a claim or a defense"; it does not specify that an amendment to add a new party also relates back to the date of the original pleading. Consequently, the Court of Appeals correctly affirmed the judgment of the trial court that the amendment to substitute plaintiff's bankruptcy trustee as plaintiff after the expiration of the period of limitations would be futile. Therefore, the decision of the Court of Appeals is affirmed." *Miller v Chapman Contracting* 477 Mich 102,107; 730 NW2d 462 (2007).

As a result, if the purported "notice" is deemed insufficient, there is no alternate grounds under MCL 500.3145 or otherwise, that would render the trial court's order of dismissal, or the Court of Appeals affirmation of that dismissal, inappropriate.

---

[8] "There is no dispute that Zurich was added to this case in May 2010, more than one year after Mr. Perkovic's accident." Plaintiff-Appellant's Application for Leave to Appeal, page 6; hereinafter, "Plaintiff's Application." [Zurich believes it was served in April, 2010, but the point is that suit against Zurich was indisputably more than one year after the accident.]

III. THE COURT SHOULD NOT CONSIDER AN APPLICATION FOR LEAVE TO APPEAL THAT DOES NOT SATISFY ANY OF THE REQUIREMENTS OF MCR 7.305 (B)

Plaintiff Appellant, Dragen Perkovic, has applied for review of summary disposition granted to Defendant Appellee Zurich American Insurance Company by the trial court, and affirmed by the Court of Appeals. Such an application must be based on one of the six mandatory grounds set forth in MCR 7.305 (B). Appellant-Perkovic does not specifically invoke any of the grounds[9], but impliedly relies upon MCR 7.305 (B) (3) or 5(a):

> (3) the issue involves legal principles of major significance to the state's jurisprudence; [MCR 7.305(B)(3)]
> OR
> 5(a) the decision is clearly erroneous and will cause material injustice,

The only issue of significance to the state's jurisprudence raised by Appellant-Perkovic is the Court of Appeal's adherence to the well-established principle of statutory interpretation:

> "When the wording of a statute is unambiguous, 'the Legislature must have intended the meaning clearly expressed and the statute must be enforced as written. No further judicial construction is required or permitted.'" [Appellant-Perkovic's Application for Leave to Appeal, page 9 – "Application"]

Appellant Perkovic claims that this maxim is properly applied by examining the last sentence of the statutory provision in question, MCL 500.3145 in isolation, and ignoring the sentence in the statute that precedes it, which requires, not surprisingly, that the notice mandated by 500.3145, be intended to give notice, and to actually furnish notice of a claim for Personal Injury Protection (PIP) No Fault benefits. The trial court, and the Court of Appeals acknowledged this requirement of the statute; and by doing so followed the equally well-established dictate of statutory interpretation that

[9] Mr. Perkovic does state that "the Court of Appeals in the Circuit Court seriously erred when it went beyond the text of § 3145(1)" , perhaps referring to MCL 7.305(B)(5)(a).

"… every word should be given meaning, and we [courts] should avoid a construction that would render any part of the statute surplusage or nugatory." *Hannay v Transp Dep't*, 497 Mich 45, 57; 860 NW2d 67 (2014).

The Court of Appeals' opinion does not involve a substantial question as to the validity of a legislative act (MCR 7.305 (B) (1)); it interprets the words of the statute without improper addition or subtraction.

For the same reason, the matter at issue does not involve legal principles of major significance to the state's jurisprudence (MCR 7.305 (B) (1)). Interpretation of a statute, in accordance with the words of the statute and accepted principles of statutory interpretation, is a daily and unremarkable occurrence in the trial and appellate courts of this state.

No other grounds under MCR 7.305 (B) for granting leave to appeal to the Supreme Court are cited by Appellant-Perkovic, and none of the other acceptable reasons for granting leave have any application in this case.[10] In short, there are no acceptable grounds for granting Appellant-Perkovic's Application for Leave to Appeal.

Construing the differently numbered, but identical predecessor to MCR 7.305 (B), one commentator offers the following guidance.

> "The principal distinction [between application to the Supreme Court, and an appellate brief submitted to the Court of Appeals] is that this " brief" must address itself to the grounds upon which an application for leave to appeal will be granted, listed in MCR 7.302 (B),… A party seeking leave to appeal must address why the issues presented fall within the grounds for granting leave to appeal set forth in MCR 7.302 (B).
>
> The grounds listed in MCR 7.302 (B) reflect a basic policy of the Supreme

[10] MCR 7.305 (B) (2) applies to cases by or against the state or its agencies; MCR 7.302 (B) (4) applies only to appeals before a decision is rendered by the Court of Appeals; MCR 7.302 (B) (5) (b) applies to a decision squarely conflicting with existing precedent in the Supreme Court or Court of Appeals – no such conflict is asserted by Perkovic; and MCR 7.305 (B) (6) applies to appeals from the Attorney Discipline Board.

> Court that energies should be devoted to reviewing important matters, and policing the administration of the judicial system, rather than being dissipated in attempts to correct every possibility of error in the decisions of the lower courts. This basic policy can be implemented effectively only through the wise exercise of the Supreme Court's discretion in its determination of which cases will be formally heard by the court. 6 Longhofer, Michigan Court Rules Practice, page 503, §7302.1.

This is not a case that calls out for Supreme Court review under any of the mandatory grounds of MCR 7.305 (B). It is a straightforward case of statutory interpretation in which a party urges emphasis on one portion of the statute, and the trial and appellate courts have considered, and given effect to all of the pertinent statutory language, reaching a result consistent with long-established precedent.

RELIEF REQUESTED

Defendant-Appellant, Zurich American Insurance Company requests that this Court deny the Plaintiff-Appellant's application for leave to appeal.

/s/James K. O'Brien
Dean & Fulkerson, P.C.
Attorneys for Defendant-Appellee,
Zurich American Insurance Company
801 W. Big Beaver, 5th Floor
Troy, Michigan 48084-4767
(248) 362-1300
jobrien@dflaw.com

Dated: June 30, 2016